



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,665	04/14/2004	Robert Haas	CH920020014US1	7531
7590 Louis P. Herzberg Intellectual Property Law Dept. IBM Corporation P.O. Box 218 Yorktown Heights, NY 10598			EXAMINER SMITH, MARCUS	
			ART UNIT 2467	PAPER NUMBER
			MAIL DATE 11/10/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/824,665

**Applicant(s)**

HAAS, ROBERT

**Examiner**

MARCUS R. SMITH

**Art Unit**

2467

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-8,11,12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-6 and 14 is/are allowed.
- 6) ☒ Claim(s) 7-8, and 11-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed 7/28/09 is sufficient to overcome the rejection of claims 1, 3-8, 11-12, and 14 based upon the written description requirement of 35 USC 112 first paragraph.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-8, and 11-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In accordance with the new USPTO's "Interim Patent Subject Matter Eligibility Examination Instructions" issued on August 24, 2009, 101 rejections will be applied if the claimed computer readable medium (even storage medium, for example) is not clearly defined to exclude non-statutory transitory media such as signals or transmission media. The 101 rejection can be overcome if the claim recites non-transitory media AND the specification is amended to recite that the media is non-transitory media.

[http://www.uspto.gov/patents/law/exam/101\\_interim\\_training.pdf](http://www.uspto.gov/patents/law/exam/101_interim_training.pdf)

### ***Allowable Subject Matter***

3. Claims 1-6, 14 allowed.
4. The following is an examiner's statement of reasons for allowance: The applicant teaches a network node a hierarchical sub-network having one or more

physical sub-nodes on a lower layer of the hierarchical network, the physical subnodes being unknown to a start node on a first layer of said hierarchical communications network, each physical subnode being able to execute at least one function, wherein a subnode capacity value is assigned to each subnode and to each function related to the respective physical subnode, and capacity determining means to determine an overall capacity value for each of the data path options and for each of the functions of said set of at least one specific function to be performed in the network node, wherein said overall capacity values of each data path option are determined with regard to said subnode capacity values.

5. However, Mauger (US 6,522,627), the closest prior, teaches a system where two user (user A and User B) can communicate through a network by two logical group nodes, wherein each logical group nodes comprises of a plurality of IP layer 2 switches (see figure 6a, column 7, lines 20-55). User A can send a connection request through the network to determine the path (tunnel) to communicate with user B and the determination is based on the available capacity of each switch (column 8, lines 1-25). But Mauger fails to disclose the logical group node having its own capacity value based on all the capacity values of IP layer 2 switches in the group and having the logical network node transmit the minimum overall capacity for each function of data path.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should

Art Unit: 2467

preferably accompany the issue fee. Such submissions should be clearly labeled

"Comments on Statement of Reasons for Allowance."

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bertin (US 6,934,249), and Galand (US 6,647,008).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCUS R. SMITH whose telephone number is (571)270-1096. The examiner can normally be reached on Mon-Thurs: 7:30 am - 5:00 p.m. and every other Friday.

Art Unit: 2467

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pankaj Kumar can be reached on 571 272-3011. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRS 11/04/09  
/Pankaj Kumar/  
Supervisory Patent Examiner, Art Unit 2467